

Minutes

Meeting: Council on Coastal Futures

Place: Best Western Sea Island Inn
Beaufort, SC

Date: June 6, 2003

Present: William W. Jones, Jr., Chairman
Jesse C. Dove, Vice-Chairman
Paul G. Campbell, Jr.
James S. Chandler, Jr.
Barbara Catenaci
James Frazier
Fred Holland
Hank Johnston
Sen. John Kuhn
Barrett Lawrimore
Tom Leath
Rep. Dwight Loftis
John Miglarese
John Settle
Jack W. Shuler
Mike Wooten
Ellison D. Smith, IV

OCRM Staff: Chris Brooks
Debra Hernandez

Facilitator: David McNair

Absent: William D. Baughman
Dana Beach

Item 1. Welcome

Chairman Jones called the meeting to order at 9:30 a.m. and asked the Secretary to call the roll. There were 17 members present, thus establishing a quorum.

Chairman Jones stated that the news media and concerned citizens were notified, as required by the State Freedom of Information Act, of the following scheduled meeting:

Council on Coastal Futures
9:30 a.m., June 6, 2003
Best Western Sea Island Inn
Beaufort, South Carolina

Chairman Jones stated that the Council has, therefore, complied with the South Carolina Freedom of Information Act.

Item 2. Public Comment

The public was invited to address the Council. Carl DiPace, a commercial fisherman, spoke about commercial fisheries, the return of the species following droughts, the problems associated with development, the need for alternatives to CCA treated pilings, the need for buffer zones, a reduction in development densities, and problems associated with mosquito spraying.

Reed Armstrong, with the S.C. Coastal Conservation League spoke next, commenting on how the S.C. Coastal Zone Management Act was very forward thinking, recognizing development pressures, the benefits of SAMPs, the May River baseline studies, the Beaufort County Dock ordinance and bulkhead ordinance, and the inclusion of vegetated buffers in development plans. He spoke on the Stormwater Management Program and how it has helped to maintain water quality and how too many people can have a negative impact on water quality. He recommended that the Coastal Council be reinstated to provide policy direction and that the Coastal Zone Management Act be changed to redirect its theme from “if no harm is demonstrated its ok” to requiring that developers prove that “no harm will come from development.” Mr. Armstrong cited development pressures, population growth and the need for OCRM to be forward thinking, to provide policy direction, and that DHEC had too many issues to address to provide the focus necessary to adequately address coastal issues.

Jackie Martin, also with the S.C. Coastal Conservation League, spoke on the rich history found in Beaufort. Ms. Martin spoke in opposition to eliminating the automatic stay. She gave numbers dealing with the number of permits appealed of both in critical area permits and coastal zone consistencies, both very small percentages of the total number of permits, and stated how those that are appealing are not doing so for fun or profit, but only when absolutely necessary to prevent irreparable harm that would occur if automatic stay was not an option. Rep. Loftis asked if appeals should be to a direct/specific issue? She stated that they should be somewhat specific, but since it is hard to distinguish responsibilities of the different program areas, that it should not be required that the answer/appeal be specific. Reed Armstrong also answered that question stating that the initial appeal should be generic in nature at first, but that as the appeal progressed, it should be more specific.

Bob McEwan from Sea Pines, spoke on the recent dredging activities ongoing in his area. He stated that he had a problem with the Corps dredge overseer and that the permittee should not be paying for this position, that the position should be independent and charged back to the permittee, and that there ought to be a more regular submittal of reports back to the Corps and faster assessment of the reports when submitted. Fred Holland asked about the meaning of overseer, at which point Chairman Jones acknowledged Mr. Bobby Riggs, with the U.S. Army Corps of Engineers, who explained how the dredge overseer is determined and how the Corps process works.

Dr. Chris Marsh, Lowcountry Institute, gave three points for the Council to consider. 1) The organization in place now for the protection of the coast is not adequate, that one size does not fit all. Beaufort County needs to be identified as a treasure as 50% of the state’s salt marsh resides in Beaufort County, and that the Beaufort County economy and environment are inseparable. 2) Regulatory system needs to use a watershed approach, its not an 8 county coastal zone, we need to include the counties upstream of the 8 county coastal zone, the headwaters, which will help to protect the salt marsh. He suggested that the coastal zone jurisdictional lines

be redrawn to incorporate these headwater regions. He spoke on the need to view development on a sub-watershed level, where we can utilize current wetland laws to protect water quality and habitat, to minimize stormwater runoff, use GIS to map these watersheds, to be able to delineate the areas that are of highest priority to reduce stormwater runoff in these areas. He addressed the need to utilize wetland and upland buffers, and that just because a wetland is isolated, with our shallow water table here, they are in fact connected, a part of the system, and that a wetland classification system is needed. Dr. Marsh also noted the need to promote development rights through conservation easements/preservation, where development rights could then be sold to developers; and the need for education for the agencies staffs so that consistent decisions can be made. 3) He also stated that the lessons learned from other states should be assessed so that we're not reinventing the wheel. Questions came from Mr. Ellison Smith, asking if he was advocating different permitting requirements for different areas of the coast? Dr. Marsh suggested that to provide no degradation of water quality, that an area may have to have more restrictive regulations if needed. Further questioning by Mr. Smith asked again if he was advocating different rules and for them to be expanded beyond the 8 county coastal zone, where Dr. Marsh answered yes that they should be expanded outside the 8 county coastal zone into the headwater areas, into freshwater areas. Mr. Wooten asked if Dr. Marsh could provide something in writing on his proposal, to which Dr. Marsh agreed. Mr. Settle stated where he had problems with Dr. Marsh's proposed wetland delineation, due to the ever-changing nature of wetlands, and how a problem could develop with private property owners issues of wetland delineations and the impact to private property owners and the taking issue. Dr. Marsh responded that he would write something up to address Mr. Settle's concerns. Most comments from the panel were favorable to the watershed approach and that it needed to be explored.

Bill Hodgins, chairman of the Beaufort County Stormwater Utility Management Committee, spoke on the 401 certification process. He also supported the watershed management approach espoused by Dr. Marsh. He stated that the economy is driven by our environmental quality. He suggested that 401 certification should be done out of Charleston, and that the related water quality impacts were not being assessed adequately out of Columbia. Based on his reading of the 401 certification regulations, he felt that nutrient discharge is not being considered adequately in the 401 certification, and that the cumulative effect of nutrient discharge is not being considered.

Item 3. Administrative Items

The minutes from the May meeting were approved with corrections. Chris Brooks suggested correcting the minutes to reflect that updates on the activities of the Council would be reported regularly to the DHEC Board, but not necessarily monthly. Mr. Brooks also clarified his comments in the May minutes to encourage the Council to make recommendations based on what was best for the coast, and not to be limited by the current state fiscal crisis. At this time Mr. Brooks introduced guests in the audience. Chairman Jones reported to the Council on the meeting with the Governor's office regarding the work the Council on Coastal Futures is doing. Chairman Jones outlined the anticipated outcomes for the meeting to include finalizing the permit process recommendations, discussing the assistance to local government recommendations, and forming a natural resource sub-committee.

Disposition of Permit Conditions: Richard Chinnis recommended that we continue the existing policy which is if no action authorized on the issued permit is taken, then none of the

conditions listed on the permit can be enforced, however, if any portion of the work authorized is undertaken, then the permit conditions can be enforced in perpetuity. Comments from Mr. Chandler made at the May meeting dealt with the expiration date on the permit causing confusion. Do we need additional language to explain that the time frame noted on the issued permit refers to the construction window? Mr. Chinnis stated that additional language could be added to explain this. Discussion ensued from Mr. Holland, Mr. Settle, and others regarding the need for this additional language.

DHEC Process of Fast-track Permitting: Lewis Shaw, EQC Deputy Commissioner, spoke on the permit liaison position that was created to coordinate a DHEC permitting team to meet with industry that is considering locating in South Carolina. This team can provide preliminary information on potential permitting problem areas and location specific limitations for particular media (i.e. air, water, etc.). He explained how they currently work with the Department of Commerce. Discussion from Mr. Holland pointed out that this process only facilitates, and does not simplify the permitting process. Mr. Shaw agreed that it does help to identify potential problems early on. Chairman Jones questioned if this was an ad hoc process, to which Mr. Shaw affirmed it was, in an effort to streamline the process. He explained how the Department of Commerce or the industry usual initiates this process. Mr. Smith questioned if other parties are included in this process, to which Mr. Shaw responded not initially, but DHEC does refer interested parties to the appropriate agencies as they see the need.

Item 4: Automatic Stay and Standing Presentations and Discussion

Mr. Sam Finklea, DHEC Assistant General Counsel, gave a description and definitions regarding standing and stay. He provided the status of both House and Senate versions of the pending bills regarding the automatic stay, and discussed changes to the language as to whether the proposed legislation pertained to all of DHEC or just OCRM. He discussed proposed language to hold DHEC harmless if the permit is overturned on appeal. Questions from Council asked if DHEC representatives were present when the bills were being discussed, to which Rep. Loftis replied yes. Comments from Mr. Chandler centered on the “intent” issue, the procedure of issuing permits, and why some permits are valid upon issuance and other are issued with “an intent” to issue.

Mr. Neil Robinson, representing the South Carolina Tourism Council spoke next on the automatic stay issue. He felt that it was important to the economic development in this state. He then discussed the permit processes and the time involved with all of the steps, where the “standing” issue comes into play along with the appeal process, which is limited to the existing record. He spoke on the cost associated with dealing with an appeal of a permit that was based on the agency’s “best decision”. He felt that a stay at this juncture was unfair and suggested that the permit was improperly issued. He felt that to impose a stay when an opportunity was given during the permitting process to object was grossly unfair and should be eliminated. He objected to the stay being used as a tool for delay by special interest groups; that the burden should be on an appellant to show standing first, then issues where an agency may have missed material facts that could affect outcomes of permit issuance could be argued. He suggested that the automatic stay be done away with and that an aggrieved party should be given a set amount of time to go to court and move for a stay. If not stayed, the court could make the permittee put up a bond to move forward. This issue has been reviewed by the S.C. Bar and Regulatory Task Force, the Administrative Law Judge Division, environmental attorneys, the Judicial Council, and all

suggest that the stay be eliminated. He also stated that the Quality of Life Task Force suggested an end to postage stamp appeals. His recommendations were for the Council to 1) endorse an end to the automatic stay, 2) add a provision that “standing” must show actual harm, something specific that is the result of the agency’s action, 3) that notice issues be consistent to ensure that all parties aggrieved may be present in the initial discussion. Jesse Dove asked who had authority to do away with the stay? Mr. Robinson noted it was the Legislature. Mr. Chandler questioned the assertion that the stated legal groups have addressed this issue as Mr. Robinson had stated, and he also questioned the permitting time frame and the amount of public involvement prior to a project being put out on public notice and whether the Quality of Life Task Force had actually addressed this issue. Mr. Robinson referred to the postage stamp appeals mentioned in their report.

Mr. Bob Guild, environmental lawyer then spoke on the importance of maintaining citizens’ rights through the review of existing permits. He gave examples of where the automatic stay has worked to prevent/overturn some controversial decisions and where the lack of information has resulted in poor permit decisions. He explained how the automatic stay provides critical protection for natural resources while the appeal process goes forward. The presumption is that all parties have been heard before a decision is made; he asserted this is not always the case. The automatic stay is important to ensure irreversible harm to natural resources is not done while administrative review goes forward. He noted how the ALJD is like the old hearing officers, to gather information for the respective boards for their consideration. He felt that a staff decision is tentative until a judicial review process is complete. He also felt that there currently exists a process to have the automatic stay lifted, and that for environmental groups to have to show direct harm to get the automatic stay lifted would be impossible, and that the need to post a bond for these groups would also be impossible. On the issue of standing, he felt that what was currently in place is being utilized in a fair and efficient manner. Questions from Mr. Miglarese addressed the number of standing cases (38) presented with (30) being dismissed for lack of standing. He also discussed the time frames for appeals.

Rep. Loftis discussed problems with the notice issue. Mr. Smith discussed how appeals are information intensive. Mr. Brooks repeated for clarification the suggestion of having a time frame for ALJ decisions and the possibility of eliminating the review by the circuit court in the appeals process.

Item 5: Finalizing Automatic Stay and Standing Recommendations:

Mayor Johnston discussed the need to fix the process of public notice, and until that is fixed, the automatic stay should not be eliminated, then he addressed the appeal process. He suggested keeping the automatic stay, correcting the notice problem, providing time for comment, and correcting the appeals process. Mr. Brooks informed him of the existing notice process on all OCRM permit applications. Mr. Wooten discussed how the threat of an appeal gets things accomplished, through negotiated settlements, and that the automatic stay gives parties the ability to extract things in the face of a possible pending appeal. Rep. Loftis stated how the appeal is often used to extract additional concessions. Mr. Chandler made the comment that if the intent is to help developers remove impediments to getting permits, doing away with the automatic stay, as the automatic stay levels the playing field for citizens to have fair hearing on public trust resources; if the automatic stay is lifted, it would take the public out of the regulatory review process. Mr. Holland stated the problem is trying to remediate impact to

public trust resource. Chairman Jones restated the central issue, to eliminate the provision that calls for automatic stay or not.

Mr. Dove made a motion to eliminate the provision that calls for the automatic stay on appeal of valid DHEC permits, seconded by Mr. Settle. Discussion follows during which Mr. Brooks mentions mandatory mediation process, Mr. Settle discusses the “intent to issue” procedure, Mr. Miglarese supports opportunities to save processing time, but not to eliminate the automatic stay. Specifically, Mr. Miglarese discussed imposing a time limit for ALJs to make decisions; eliminating the circuit court review; and addressing public notice issues. Mr. Smith noted how most appeals are neighbor issues, so the automatic stay issue affects others than just developers and environmental groups. Mr. Dove asked who had authority to eliminate automatic stay and Mr. Chandler noted that since 1993 consolidation of permitting processes, no regulatory changes have been made.

A motion was made and seconded to call for the question. The motion to eliminate the automatic stay failed for lack of a supermajority (12) vote in favor.

Discussion continued on the automatic stay and other issues relating to permit and appeal processing times. Chairman Jones requested that Mr. Brooks look into issues of public notice. Mr. Settle made a motion to eliminate the automatic stay, eliminate the circuit court level of the appeal process, require that ALJs render a decision in 90 days, and extend the notice to file an appeal from 15 to 30 days. Discussion continued among Council members

Mayor Johnston made a recommendation that staff bring forth suggestions and recommendations on changes to process to address Council’s concerns regarding public notice. A motion was made to table the discussion until the August meeting and was unanimously approved.

Mr. Brooks asked for direction to staff on time frames for appeals. Discussion indicated that 30 days was the norm. Chairman Jones gave directive to staff to make recommendations dealing with amount of time that someone has to make an appeal and the amount of notice that is requisite in these types of permit applications, in conjunction with other concerns discussed.

The Council then focused on Recommendation #6 regarding Standing. Mr. Smith felt that nothing was wrong that needed to be fixed, with Mr. Chandler agreeing and moved that the Council take no action on this recommendation. Mayor Johnston recommended rejecting the recommendation rather than taking no action. The amendment to the motion was accepted, and the motion approved by a vote of 15 to 1.

Item 6: Internal Coordination of DHEC Permits and Certifications

Ms. Sally Knowles, Assistant Bureau Chief, Bureau of Water made a presentation explaining how 401 water quality certification interacts with OCRM critical area permit and coastal zone consistency processes. She detailed the processes and the creation of the Memorandum of Agreement (MOA) between EQC and OCRM in 1994 to streamline the process and reduce duplication of effort. Changes in staff and time have eroded some of the commitment to that original MOA. Staff from both deputy areas (EQC and OCRM) are recommitted to the processes agreed to in the original MOA and to making other improvements. She addressed

recent improvements to internal coordination on information needs, such as scheduling meetings between EQC and OCRM on a monthly basis, identifying a primary point of contact to help avoid duplication of effort of the applicant and the Department staff, and having only one decision document coming from DHEC. Additionally, EQC has agreed to institute weekly office hours for 401 staff in the OCRM Charleston office, with the potential for occasionally switching to the Beaufort and Myrtle Beach offices. Additional issues remain to be addressed including resolving differences between how BOW and OCRM look at compensatory mitigation for projects designed under OCRM freshwater wetland master planning guidelines. A good framework for coordination exists, and it is important that OCRM review projects for consistency with the coastal zone management plan while BOW review for compliance with water quality standards.

Both OCRM and BOW staff proposed to improve internal coordination to allow for concurrent and expedited project reviews and to try to further streamline the process through the use of general permits. Knowles discussed public notice issues for 401, where there is always an upfront public notice due to coordination with the Corps permit, and that public hearing can be held, and the use of “notice of proposed decisions”.

Discussion followed. Mr. Chandler stated how the 401 certification document allows them to see what has transpired before the decision was made and makes appeal decisions easier to make. Mr. McNair brought forth the new staff recommendation to replace recommendation #2 and followed with a discussion on permit process recommendations. Mr. Wooten asked that a playbook on mitigation be provided, with SOP, so that developers will know what to expect up front. Ms. Knowles discussed how BOW must abide by Federal guidelines of the SOP. She realizes some inconsistencies do exist, and they are striving to improve project coordination through regular meetings, but did admit a need to redo the MOA with updates of progress made to date.

Item 7: Finalizing Recommendation to Consolidate 401 and DHEC-OCRM permitting programs

A motion was made and seconded to replace recommendation #2 regarding 401 certifications and OCRM permitting with the following: (1) Continue to improve internal Department coordination; (2) insure concurrent and expedited project review; and (3) explore future streamlining through use of general permits or other blanket authorizations. The motion passed unanimously.

Item 8: Modeling Coastal Growth in South Carolina: Policy Implications for the Future

Mr. Jeff Allen, from Clemson University’s Strom Thurmond Institute, gave a presentation on urban growth in South Carolina (see Attachment #). He discussed the modeling techniques utilized and trends in the state’s urban growth areas which are primarily along the coast and the I-85 corridor in the Greenville-Spartanburg area. Discussion followed based on the limits of the modeling methods. He gave two examples, the Charleston area and Beaufort, looking at expansion based on parcel development, associated population increase, and impacts of Federal Flood Insurance Program. Since growth is not going to stop, we need to decide on how S.C. is going to grow.

Item 9: Local Government Assistance Recommendations

Recommendations 1, 2, and 4 will be addressed at the August meeting.

Regarding recommendation 3, Mr. McNair states that this issue is a local government decision process, with developers getting density credits for preserving wetlands onsite, and not a council issue per se, but should be endorsed. The motion to endorse passes unanimously.

Mr. Holland, expresses concern on wording of recommendation number 6 regarding “clearinghouse” rather than “center”, to direct people to the appropriate place for information. Dr. Miglarese stated that agencies already have competent staffs with expertise and experience, no need to build anew, but recognize that we need to maintain what we have and to build upon it. Dr. Miglarese moves to accept the recommendation, which was seconded. Discussion follows by Mayor Johnston who questions if we are diluting existing expertise, and Dr. Holland rewords motion to say “clearinghouse” rather than “center of”. After some discussion, Recommendation 6 was unanimously approved by the Council.

Comments by Debra Hernandez on this proposal were to only address those areas that OCRM has expertise in such as beachfront management issues, stormwater management, wetlands, salt marsh management, etc.

Recommendation 5 is related to the public notice issues discussed during the automatic stay debate and Mayor Johnston recommends that staff come back in August on this.

Mr. Brooks addresses Mr. Smith concerns regarding public access issues, to be discussed later. (See recommendation 9 of the resource management issues.)

Recommendation 7 is discussed. Ms. Hernandez comments on Mike Rowe’s discussion at the previous Council meeting of Mr. Rowe’s meeting with the Municipal Association, and a proposal to seek grant funds to develop model natural resource and capital investment chapters to help guide local governments as they update their local plans. Discussion leads to amended recommendation 7 as follows: DHEC, with other state agencies, should coordinate development of model ‘natural resources’ and ‘capitol investment’ chapters for local comprehensive plans. A motion in support of the amended recommendation passed unanimously.

Item 10: Resource Management Issues

Council discussed establishing a subcommittee with the following mission: This subcommittee will develop a preliminary prioritized list of resource management issues for the Council’s consideration. As necessary, the subcommittee will include an explanation that defines the scope of the issues to be considered by the Council. As a starting point, the resource management issues list will include those items already identified during the previous meetings of the Council. Additionally, this subcommittee will identify potential speakers and presentations needed to fully inform the Council’s discussion of the issues.

Volunteers for committee are: Dr. Holland, Dr. Miglarese, Mrs. Catanaci, Mr. Chandler, Mr. Smith, Mayor Johnston, Mr. Settle and Chairman Jones.

Item 11: Meeting Wrap-up and Next Steps

Ms. Hernandez made some brief comments on the Pew Ocean Commission's recently released report. The primary intent of the Commission was to review coastal and ocean programs, laws, policies, and resources, and to make recommendations for the future. The Pew Commission focused on habitat, fisheries, and natural resource management frameworks. Copies of the report can be obtained. Discussion followed by Dr. Miglarese, Dr. Holland, and Rep. Loftis. DHEC-OCRM will provide copies of the executive summary of the report to Council members as well as the Coastal States Organization's recommendations to the two ocean commissions.

Following agreement to relocate the October meeting to the Wampee Conference and Training Center in Berkeley County, the meeting was adjourned at 4:30 pm.

Rocky Browder

August 1, 2003